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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,018	02/25/2004	Robert Kenneth Nock	032899-011	9018

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/785,018

Applicant(s)

NOCK, ROBERT KENNETH

Examiner

Andrea M. Valenti

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The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-12 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because of the use of legal phraseology "means". Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,223,637 to Keefe.

Regarding Claim 1, Keefe teaches a bird feeder perch assembly comprising a locating member (Keefe #26 and 34), a perch (Keefe #36) and pivoting means, wherein the pivoting means allows the perch to pivot relative to said locating member, such that

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in use said locating member may engage a bird feeder body (Keefe #13) and when so engaged said perch may pivot, from a retracted position in which said perch is substantially flush with said bird feeder body, to an extended position in which said perch projects outwardly from said bird feeder body such that a bird may rest upon said perch (Keefe Fig. 1 and Fig. 2 #29).

Regarding Claim 2, Keefe teaches the perch pivots about an axis that, in use, is either substantially parallel to or tangential to the outer surface of said bird feeder body (Keefe #13 and #32).

Regarding Claim 3, Keefe teaches the pivoting means comprises a recess in said locating member and an engaging shaft attached to or integral with said perch (Keefe #32 and 34).

Regarding Claim 4, Keefe teaches the recess in said locating member is U-shaped (Fig. 3 #34).

Regarding Claim 5, Keefe teaches in moving from retracted position to extended position said perch pivots through angle of at least 80 degrees (Keefe Fig. 2 #29).

Regarding Claim 6, Keefe teaches the perch comprises a restraining portion that is displaced some distance outward from the axis about which said perch may pivot such that when said perch is in the fully extended position said restraining portion abuts against a stop member that is integral with or attached to said locating member (Keefe #38).

Regarding Claim 7, Keefe teaches the perch comprises at least two elongate members that extend in mutually orthogonal directions (Fig. 3 #29).

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Regarding Claim 10, Keefe teaches the pivoting means comprises a plurality of recesses in said locating member (Fig. 3 #34).

Regarding Claim 11, Keefe teaches the locating member is a bird feeding port (Keefe #26).

Regarding Claim 12, Keefe teaches in use said pivoting means is located below said bird feeding port aperture (Keefe Fig. 2).

Claims 1-7 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by European Patent EP 0104766 to Hegedus et al.

Regarding Claim 1, Hegedus teaches a bird feeder perch assembly comprising a locating member (Hegedus Fig. 8), a perch (Hegedus #123) and pivoting means, wherein the pivoting means allows the perch to pivot relative to said locating member, such that in use said locating member may engage a bird feeder body and when so engaged said perch may pivot, from a retracted position in which said perch is substantially flush with said bird feeder body, to an extended position in which said perch projects outwardly from said bird feeder body such that a bird may rest upon said perch (Hegedus Fig. 6 and 7).

Regarding Claim 2, Hegedus teaches the perch pivots about an axis that, in use, is either substantially parallel to or tangential to the outer surface of said bird feeder body (Hegedus Fig. 4 and 1).

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Regarding Claim 3, Hegedus teaches the pivoting means comprises a recess in said locating member and an engaging shaft attached to or integral with said perch (Hegedus Fig. 8 #39).

Regarding Claim 4, Hegedus teaches the recess in said locating member is U-shaped (Hegedus Fig. 1 and 5).

Regarding Claim 5, Hegedus teaches in moving from retracted position to extended position said perch pivots through angle of at least 80 (Hegedus Fig. 1 #123).

Regarding Claim 6, Hegedus teaches a restraining portion that is displaced some distance outward from the axis about which said perch may pivot such that when said perch is in the fully extended position said restraining portion abuts against a stop member that is integral with or attached to said locating member (Hegedus #126 and 128).

Regarding Claim 7, Hegedus teaches a perch comprises at least two elongate members that extend in mutually orthogonal directions (Hegedus Fig. 7 #37).

Regarding Claim 9, Hegedus teaches an assembly that the perch is U-shaped and said pivoting means comprises a pivot at each free end of said perch (Hegedus Fig. 3 #122).

Regarding Claim 10, Hegedus teaches pivoting means comprises a plurality of recesses in said locating member (Hegedys Fig, 7 #37).

Regarding Claim 11, Hegedus teaches the locating member is a bird feeding port (Hegedus Fig. 4).

Regarding Claim 12, Hegedus teaches the pivoting means is located below said bird feeding port aperture (Hegedus Fig. 4 #123).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,223,637 to Keefe.

Regarding Claims 8 and 9, Keefe is silent on the perch being ring-shaped and where said pivoting means comprises a pivot at the periphery of said ring or the perch being U-shaped and said pivoting means comprises a pivot at each free end of said perch. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Keefe at the time of the invention since the modification is merely a change in shape of an element performing the same intended function merely modified to enhance the ergonomic features of the design for the birds.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,033,411; U.S. Patent No. 6,408,788; U.S. Patent No. 2,891,711; German Patent DE 2730066.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

26 October 2004



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600